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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1944

No. 383-384

EDWARD McGREW

Petitioner.

vs.

WILLIAM P. SIMMONS, AND FRANCIS R. HARBISON

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENSYLVANIA.

EDWARD McGREW

Petitioner in Person.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

To the Honorable Harlan Fiske Stone Chief Justice of the Supreme Court of the United States and to the Associate Justices of the Supreme Court of the United States.

The petitioner, EDWARD McGREW prays that a writ of certiorari to the Supreme Court of Pennsilvania issue to review the decrees of that court made on April 11, 1944

PROCEEDINGS.

John McGrew and Edward McGrew, your petitioner gave a bond and mortgage of $4000 to Eliza H. Lewes on 47½ one acre lots, on June 10, 1909, which, after the death of the mortgagee passed to Georg L. Elliott, who assigned them to Francis R. Harbison, respondent, on Oct. 15, 1937. The in-

terest of John Mc Grew in the property was sold to your petitioner in 1918. Jno. Mc Grew died on Dec. 3, 1941. your petitioner gave a bond and mortgage to William P. Simmons, respondent, on Nov. 1, 1930, in the sum of $4400 on 13⅓ one acre lots. Both properties are in recorded lot plans.

On may 11, 1937, your petitioner filed his petition in the District Court of the United States for the Western District of Pennsylvania under Section 75 (a to r) of the Bankruptcy Act of Congress approved July 1, 1898 and its supplements, at No. 19890 in Bankruptcy, and on July 21, 1937 was declared a Bankrupt under section 75(s). (7a.). On July 15, 1941, the District Court dismissed the proceedings on the grounds that your petitioner was not a Farmer. During time allowed for appeal and after notice of Appeal on Aug. 25, 1941, the respondents, entered their bonds, issued Fi. Fas. and advertised the properties of your petitioner for Sheriff Sale on Sept. 8, 1941. On petition (14a-15a) the court of Common Pleas on Sept 17, 1941 ordered the proceeding in that Court stayed "until the final determination of the bankruptcy proceeding of the defendant now pending in the Federal Courts and further order of this Court." (21a). Mar. 23, 1942 Circuit Court of Appeals at No. 7824 affirmed order of the District Court of July 15, 1941, and on Oct. 12, 1942 petition for certiorari was denied at No. 170 Oct. Term 1942. On each adverse decision of the Federal Courts, the respondents proceeded to foreclose to sell your petitioners property, but on petition was restrained by the

Court of Common Pleas.

On Oct. 17, 1942, your petitioner filed a second petition under Section 75 (a to r) in the District Court of the United States for the Western District of Pennsylvania at No. 21361 in Bankruptcy. On petition the Court of Common Pleas again made restraining order: "it is therefore ordered --- that all proceedings and execution thereon --- are hereby stayed pending final determination of said bankruptcy proceedings. (29a) at No 34 and (31a) at No. 70. On Mar. 25, 1943, the District Court dismissed the proceedings at No. 21361 on the grounds that your petitioner was not a Farmer. On Apr. 17, notice of Appeal to the Circuit Court of Appeals was filed at No. 8349. On Apr. 5, 1943, on petition, the State Court again ordered the sale of the property of your petitioner on May 3, 1943. The time for the sale was postponed until May 10, 1943 on petion to the District Court of United States and the filing in that Court of a petition for a Real Property Arrangement under Section 420 of Chapter XII of the Bankruptcy Act at No. 21420 in said District Court. The stay granted was vacated upon the contetion of opposing Counsel that a bankruptcy proceding was pending in the Appellant Court at No. 8349. And notwithstanding the petition and prayer of your petitioner on Apr. 30, 1943 and notice of appeal to the Circuit Court of Appeals, the Common Pleas Court of Allegheny County on petition to said Court on May 10, 1943, presented without Notice to your petitioner, ordered the property under both executions Sold on that day at 11 o'clock A.M. (43a-44a) at No. 70 and

(46a) at No. 34, of the Supreme Court of Penna. Francis R. Harbison, respondent, paid in his money in the sum of $667.80 within 10 days in accordance with the advertised conditions of Sheriff Sale and William P. Simmons did not. Petition to set aside Sheriffs and Exception to the confirmation of the Sheriff's Deed were file on May 22, 1943 at No. 200 for Harbison, being No. 34 in the State Supreme Court, and two Amendments to said petition were filed on June 2, 1943 and June 21, 1943. (46a to 50a), (57a to 59a.), (59a and 60a.), and on June 21, 1943 Suggestion of death of John Mc Grew was filed, see Appendix to Brief at page 24 of No. 34. on Sept. 7, 1943 the court made the order: "and Now, to wit, September 7th, 1943, the within matter having come on for argument, upon consideration thereof, it is hereby ordered and decreed that the rule granted May 22, 1943 to show cause be and is hereby dismissed and exceptions to the Sheriff's sale are hereby dismissed and the Prothonotary is ordered to confirm the Sheriff's deed." By the Court.-(63a) R — E & O'T. From this order your petitioner appeals at No. 34 March Term, 1944 to the Supreme Court of Pennsylvania. on Sept. 7 1943, your Petitioner filed as part of the record in this case his Suggestion of "Coram Non Judice", with the Record on appeal to the United States Circuit Court of Appeals for the Third Circuit at No. 8349.

William P. Simmons, resondent, did not pay any money into the Sheiffs office until Sept. 15, 1943 (49a) over 4 months after the sale, and as your petitioner was not advised that the money was paid into the Sheriff's office and his counsel having withdrawn, and did not except to the sale until after the deed was confirmed by the Court on Sept. 27, 1943

on Sept. 30, 1943, your petitioner filed Petition to Set Aside the Sheriff's Sale and Exceptions to the confirmation of the Sheriff's Deed. Refused. Exceptions allowed. (46a to 50a). On Oct. 21, 1943, your Petitioner filed Petition to Set Aside Sheriff Sale and to Void Judgment at No. 925 October Term, 1941 D. S.B. and to Void Fi.Fa. at No. 388 October Term, 1941. Petition refused. Exception noted. (59a. to 63a.) From this order, your petitioner appealed to the Supreme Court of Pennsylvania at No. 70 march Term 1944. No. 21240 in the District Court was dismiss on June 1, 1943 and in the Circuit Court of Appeals on Aug. 18, 1943, the Clerk of the District Court refusing to transmit the Record. At No. 21361 in the District, the praecipe to transmit Record on appeal was made and printed copies of the Record were present to the Clerk on time, but She refused to certify same on the grounds that it contained excerpts from the record, and on Aug. 11, 1943, the court of Appeals dismissed the cause. Your petition had complete type written Copies of the Record made, and certified and transmitted to the appellant Court and on Dec. 23, 1943, your petitioner presented his petition in person to the Appellant Court to Reinstate Cause. Motion was taken under advisement by the Court. On the same day printed copies of Brief and appendix were filed and offer to post bond for costs made. On Feb. 21, 1944, Appellant Court made order Denying Petition to Reinstate Appeal at No. 8349.

Summary Statement of the matter Involved

Your petitioner filed his petition in the District Court of the United State for the Western District of Pennsylvania at No. 19890 on May 11, 1937, staying all creditors and all proceedings in any Court and on July 21, 1937 was declared a bankrupt under Section 75(s) in Bankruptcy. It is contended: that any proceedings instituted against your petitioner in the state courts at any time after the filing of his petition under Section 75 (a to r) are contrary to the Federal laws and void or voidable; that when he was declared not to be a Farmer it was the duty of the District Court not to dismiss but to retain jurisdiction and liquidate under the Bankruptcy Act; that he is now in Bankruptcy and under controll of the Federal Courts at No. 19890; that the Bankruptcy Proceeding at No. 21361, being No. 8349 in the Court of Appeals is not terminated; that the Constitutional rights of your petitioner have been violated.

Jurisdiction.

The Supreme Court of the United States is asked to exercise its jurisdiction under Section 75 (n, o, p. & s) of the Bankruptcy Act.

(n)-"The filing of a petition --- shall immediately subject the Farmer and all of his property --- to the exclusive jurisdiction of the Court." (o)-"the following proceedings shall not be instituted --(2) Proceedings for foreclosure of a mortgage." (p)-"The prohibitions of sub. (o) shall apply to all judicial---proceedings in any Court." (s)- Any farmer failing to

obtain --- composition or extension may amend his petition --- asking to be adjudged a bankrupt. Kalb v. Fuerstein 308 U.S. 433 Borchard v. California Bank 310 U.S. 311 Sec. 22 of the bankruptcy act (11 U.S.C.A. Sec. 45) Reference after adjudication. (a) "After a person has been adjudged a bankrupt the judge may cause the trustee to proceed with the administration of the estate, or refer it (1) generally to the referee --- (2) to any referee within the territorial jurisdiction of the court."

Baxter v. Savings Bank of Utica N.Y. et al. No. 8335 Circuit Court of Appeals, Fifth Circuit 92 F (2d) 404.

Paradise L. & L. Co. v. Federal L.B. of Berkley Cal. 108 F (2d.) 832 No. 1867, circuit court of Appeals, 10th Circuit.

Lane vs. Illininois B. & L. I. Co. 116 F (2d) 475

Schreiver v. Oxford B. & L. A. of Ohio, 116 F (2d) 693.

U.S.C. Annotated 76 a. - Termination of Jurisdiction. "The Supreme Court's denial of certiorari to review order of Circuit Court of Appeals affirming District Count's order dismissing proceedings for an agricultural composition or extension of debts did not terminate district Court's juris diction, but the proceeding was still pending until the subsequent filing of mandate from the Circuit Court of Appeals to the District Court.

In Re Shyvers D.C. Cal. 1940, 33 F. Supp. 643.

B & O. R. Co., v. United States, 279 U.S. 781

In Re Sanford Fork & Tool Co, 160 U.S. 247

At bar, the Supreme Court of the United States, on Oct. 12, 1942, denied Certiorari

to the circuit Court of Appeals at No. 170 October Term 1942. No mandate was handed down by the Appellant Court to the District Court and no judgment has been entered in the district court and said Court stands full custodia legis under the order entered adjudging your petitioner bankrupt.

On the first attempt of the respondants to procede with foreclosure, your petitioner set forth the jurisdiction of the Federal Courts in his petition to Restrain Sale filed on Sept. 3 1941 (14a) and setting forth that he was declared a bankrupt under Sec. 75 (s) in proceedings at No. 19890 in the District Court. On Sept. 17, 1941, the State Court recognised the jurisdiction of the Federal Courts and made the following order: "plaintiff is hereby enjoined and restrained from selling --- the property --- until the final determination of the bankruptcy proceeding of the defendant now pending in the Federal Courts and further order of the court." By the Court. H.R. (21a). There after the State Court recognise the jurisdiction of the Federal Courts during time for appeal up until Apr. 5, 1943. (25a), (26a) (29a), when the President Judge of the State Court announced that said Court had made enough stays and would not grant any more. The time for appeal was pending and notice of appeal was filed in the district Court on Apr. 17, 1943 at No. 21361. In his petition filed Apr. 30, 1943, your petitioner again asserted the jurisdiction of the

Federal Courts. (38a). Again in his petition at No. 200, being No. 34 in Supreme Court of Penna. your Petitioner set forth the jurisdiction of the Federal Courts and the appeal to the Circuit Court of appeals at No. 8349 and again in Amendment to petition filed June 2, 1943 he declared he is a bankrupt under Sec. 75(s) and that execution at No. 200 Oct. Term 1941 is contrary to law and null and void, and in a second amendment to Petition on June 21, 1943 he set forth his right to appeal under Chapter XII. (46a)(57a) (59a). On Sept. 7, 1943, he filed his suggestion of Coram Non Judice with his Appendix to Brief filed in the Circuit, a certified copy of which from the State Supreme Court and 10 additional Copies are filed herewith. These question were again raised in questions Involved and assignments of Error to the State Supreme Court at both appeals. At No. 388 in the lower State Court your petitioner again, in his Petition to Set aside Sheriff's Sale and Exceptions to the Confirmation of the Sheriff's Deed on Sept. 30, 1943 at (46a) and in his petition to set Aside Sheriff Sale and to Void Judgment at No. 925 October Term 1941 and to Void Fi. Fa. at No. 388 Oct. Term 1941 on Oct. 21, 1943 (59a), raised these questions. In his "Suggestion of Coram Non Judice, your Petition suggest an all exclusive Federal action pending at Nos. 19890, 21361 and 21420 in the lower Court and at Nos. 7824, 8349 and 8430 above not disposed of. In his Briefs on appeal it was fully set forth that the jurisdiction of the Federal Courts has not terminated. In his

Petition to restrain sale filed on Sept. 3, 1941 (16a) paragraph-7, your petitioner avers "- your Honorable Court is without jurisdiction to permit the sale of said realestate which is in the custody and control of the United States pending the final disposion of said proceedings, and the action above named is in violation of the constitutional rights of your petitioner. In his "Suggestion of Coram Non Judice (31a) of appendix and in his petition to set Aside Sale &c. filed on Oct. 21, 1943 at No. 388 in the lower State Ct. Par. 13 (62a) violation of his Constitutional rights is cited.

at No. 34 - (63a) Order of Court, (filed Sept. 7, 1943): "And now, to wit, September 7, 1943, the within matter having come on for Argument, upon consideration there of, it is hereby ordered and decreed that the rule, granted May 22, 1943 to show Cause, be and is hereby dismissed, and the defendants exceptions to the Sheriff's sale are hereby dismissed and the Prothonotary is ordered to confirm the Sheriffs Deed. - By The Court. A-F & O'T.

From this order, your petitioner Appealed to the Supreme Court of Pennsylvania.

In the memorandum Opinion by Rowand, P.J. (63a to 68a) the Learned Judge recites that the lower State Court granted stays right along pending appeals, from Sept. 3, 1941 to May 7, 1943, but does not explain why said Court then ordered Sheriff's Sale after notice of appeal on apr. 17, 1943 to the Circuit Court. He proceeded upon his own notions of e-

quity, which Mr. Justice Black says he is not permitted to do. Kalb vs. Feuerstein 308 U.S. 433. He has ignored "Suggestion of "Coram Non Judidice" and your petitioner to continue in bankruptcy until he is discharged is not discussed.

At No. 70, on Oct. 21, 1943, Petition to set aside Sheriff's Sale &c. was presented. The Honorable Judge of the Court the following Order:

And Now, Oct. 21, 1943, the within petition is refused. Exception noted. By The Court. Mc Donald, J.

From this order your petitioner appealed to the Supreme Court of Pennsylvania.

In Opinion, filed Dec. 31, 1943 (63a to-70a) by Mc Donald, J., the Learned judge said: "on July 21, 1937, the defendant was was declared bankrupt." The said petition for review was refused by the Supreme Court of the United States, and by such action on the part of the Supreme Court, the order of the District Court became final and the bankruptcy proceedings were terminated." (65a) The Court erred in this opinion.

The opinion recites that on Oct. 17, 1942 your petitioner filed petition under Section 75; that this court granted 7 stays, and the final stay was terminated May 8, 1943. He does not state why the sale could be made pending appeal made by notice of Apr. 17, 1943 In his petitions to set aside Sale &c. presente on Sept. 30, 1943 and Oct. 21, 1943, your petitioner set forth that pro-

ceedings at No. 8349 in the Circuit Court of appeals were still pending. Your petitioner filed his for Reinstatement on Dec. 23, 1943 after he had completed his appeal, which the Court took under consideration, which action revived the case in that Court. The court denied petition to Reinstate on Feb. 21, 1944. The case was then open for appeal, which was not taken. The Court has not made a mandate to the Court below, and no judgment has been entered in the Court below and the case is still open.

The Supreme Court of Pennsylvania made the following order: Filed Apr. 11, 1944.- Per curiam: The final orders of the Court below are affirmed on the opinions of President Judge Rowand and Judge Mc Donald; costs to be paid by Appellant.

Order

May 22, 1944, Reargument refused.

Per Curiam.

Your petitioner is appealing from these orders.

Date of Filing petition in the Supreme Court of the United States is August 22, 1944.

The Questions presented

1.

Was the judgment entered, the Fi. Fa. issued and the Sheriff's Sale advertised contrary to the laws of the United states?

The filing of the petition on may 11, 1937 stayed all proceedings by any official in any Court while the case was pending. An appeal was pending when these acts were preformed. Sec. 75 (n) (o) and (P).

2.

Are the judgment, Fi. Fa. and Sale null and void or voidable. Kalb v. Feuerstein U.S. 308, 433 @ P. 438

3.

Is the order of July 21, 1937, at No. 19890 in Bankruptcy, declaring your petitioner a bankrupt, still in effect?

No mandate was handed down and no entered order or judgment ever reversed it. In re Shyvers. D.C. Cal. 1940, 33 F. Supp. 643; B & O. R. Co. v. United States, 279 U.S. 781; In Re Sanford Fork & Tool Co., 160 U.S. 247.

4.

Is your petitioner still in Bankruptcy and his property under control of the Federal Courts?

At bar the dismissis made upon the merits, as the words "for lack of jurisdiction" are definitely omitted. Sec. 4 (a) of the Bankruptcy Act says: "Any person --- shall be entitled to the benefits of this Act as a volentary bankrupt."

5.

Where it is found that the petitioner under Section 75 is not a Farmer, is it proper to retain jurisdiction and liquidate under the Bankrupt-

cy Act, where petitioner has been declared a Bankrupt under sec. 75(S)?
see cases cited on page 7 of this petition paragraph 2 &c.

6.

Is the cause at No. 8349 still pending in the Court of Appeals?
See p. 12 of this petition, par. 1.

7.

Are the proceedings hereunder and the acts preformed in violation of the rights of your petitioner under the 5th and 14th amendments to the Constitution, due process and equal rights?
He has been denied his rights under Sec. 4(a) of the Bankruptcy Act.

Reasons for Allowing Writ.

The questions involved are all Federal questions. The acts of the respondents are contrary to the decisions of this Court. It does not appear that this Court has ruled on Question 5.

Dated at Library Pennsylvania, August 27/1944

Respectfully submitted,

Edward McGrew
In Person.